

D.T.E. 98-13E

Investigation pursuant to the Electric Restructuring Act, St. 1997, c. 164, §§ 239, 240 (G.L.

c. 164, §§ 94G, 94G½) by the Department of Telecommunications and Energy, to consider whether granting exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ (including fuel charges, performance reviews, and goal-settings) for Massachusetts Electric Company and Nantucket Electric Company is in the public interest.

APPEARANCES: Thomas G. Robinson, Esquire

New England power Service Company

25 Research Drive

Westborough, Massachusetts

FOR: MASSACHUSETTS ELECTRIC COMPANY

and NANTUCKET ELECTRIC COMPANY

Respondent

Thomas F. Reilly, Attorney General

By: John M. Grugan, Assistant Attorney General

Joseph W. Rogers, Assistant Attorney General

Regulated Industries Division

Public Protection Bureau

200 Portland Street

Boston, Massachusetts 02114

Intervenor

## I. INTRODUCTION

On January 22, 1998, the Department of Telecommunications and Energy ("Department") opened an investigation pursuant to the Electric Industry Restructuring Act ("Restructuring Act"), St. 1997, c. 164, §§ 239, 240 (G.L. c. 164, §§ 94G, 94G½), to consider whether granting exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ (including fuel charges, performance reviews and goal-settings) for Massachusetts Electric Company ("MECo"), Nantucket Electric Company ("Nantucket"), Cambridge Electric Light Company, Commonwealth Electric Company, Fitchburg Gas & Electric Light Company, Boston Edison Company, Eastern Edison Company, and Western Massachusetts Electric Company (collectively "Companies") is in the public interest. Notice of §§ 94G and 94G½ Exemptions. The matters were docketed as D.T.E. 98-13A through F. This Order pertains solely to MECo and Nantucket, D.T.E. 98-13E.

Pursuant to the duly issued notice, the Company and the Attorney General filed written comments. A public hearing was held at the Department's offices on February 10, 1998. The Attorney General of the Commonwealth ("Attorney General") intervened as of right pursuant to G.L. c. 12, § 11E. No petitions for leave to intervene were filed in MECo's and Nantucket's proceeding.

On February 20, 1998, the Department issued an Order that, in pertinent part, directed the Companies to file by May 1, 1998, for Department approval, a plan for reconciling any over- or under-recovery in their respective fuel charge accounts and a proposal for exemptions from some or all of the requirements of G.L. c. 164, §§ 94G and 94G½ ("February 20, 1998 Order").<sup>(1)</sup> MECo and Nantucket filed their plan for reconciliation and exemptions on May 1, 1998 ("May 1, 1998 Plan").

MECo is a wholly-owned subsidiary of New England Electric System ("NEES"), a utility holding company. NEES' other subsidiaries, affiliates of MECo, include New England Power Company ("NEP"); Granite State Electric Company in New Hampshire; Narragansett Electric Company in Rhode Island; Nantucket;<sup>(2)</sup> New England Power Service Company ("NEPSICO"); and New England Energy, Inc. Prior to March 1, 1998, MECo purchased all of its power requirements at wholesale from NEP pursuant to rates regulated by the Federal Energy Regulatory Commission ("FERC"). Thus, MECo has never owned or operated any generating units.

An evidentiary hearing was held at the offices of the Department, on May 12, 1999<sup>(3)</sup> regarding MECo and Nantucket's May 1, 1998 Plan. In support of their filing, MECo and Nantucket sponsored the testimony of one witness: Theresa Burns, principal rate analyst with NEPSCO. The evidentiary record consists of three exhibits, one record request response, and the testimony of Ms. Burns. The Attorney General filed a brief at the conclusion of the hearings in each of the separate cases.

## II. POSITIONS OF THE PARTIES

### 1. MECo and Nantucket

According to their testimony, MECo and Nantucket have a fuel charge over-recovery of \$20,800,459 (Exh. MECo-2, Sch. 3; Tr. at 6). MECo and Nantucket request that their fuel charge over-recovery be returned to their ratepayers in the form of a per kilowatthour ("KWH") credit on bills over one year (Tr. at 6).<sup>(4)</sup>

In addition, MECo and Nantucket request that they be exempted from the performance review provisions of G.L. c. 164, §§ 94G and 94G½ (May 1, 1998 Plan at 14). MECo and Nantucket state that they do not own generating units and historically have received annual waivers of these requirements from the Department (*id.*).

### 2. Attorney General

The Attorney General proposes that the fuel charge over-recovery be returned to ratepayers as a credit to the standard offer deferral account ("SODA"), arguing that such a credit both ensures "consumers are provided with the full value of the March 1, 1998, balance and ties the refunds to those who paid the overcharge" (Attorney General Brief at 9). The Attorney General does not take issue with the Department granting exemptions from G.L. c. 164, §§ 94G and 94G½ for goal-settings and performance reviews (*id.* at 10). However, the Attorney General asserts that such exemptions should not create future limitations on the Department's authority to investigate the procurement of standard offer and default service power (*id.* at 11).

The Attorney General also argues that ratepayers should be reimbursed for the replacement power costs incurred by MECO and Nantucket as a result of the outages at Millstone III and passed through to its ratepayers (*id.* at 13). The Attorney General argues that Millstone III was operated imprudently and that ratepayers should not be required to pay for any imprudence (*id.*). The Attorney General states that the Department, as part of the final performance review, should investigate the prudence of the operation of Millstone III in regarding to these outages (*id.*).

Finally, the Attorney General is concerned that there are several outstanding fuel charge issues that may not have been identified as part of this proceeding (*id.* at 14). As a result, the Attorney General recommends that the Department order MECo and Nantucket to compile a list, subject to review, of outstanding fuel charge related issues and have MECo and Nantucket file a plan on how they intend to resolve them (*id.*).

### III. ANALYSIS AND FINDINGS

MECo and Nantucket state that they have a fuel charge over-recovery of \$20,800,459 (Exh. MECo-2, Sch. 3; Tr. at 6). No party in this proceeding disputed the amount of the fuel charge over-recovery. After review of the documentation supporting these figures, the Department finds that \$20,800,459 is the fuel charge over-recovery for MECo and Nantucket. Accordingly, \$20,800,459 shall be returned to ratepayers.

The Department agrees with MECo and Nantucket that the fuel charge over-recovery should be returned to ratepayers in the form of a per KWH credit on bills. This method also accomplishes the goal of the Attorney General's proposal that the over-recoveries be credited to ratepayers without contradicting the mandate of General Laws c. 164, § 94(b), which provides that the fuel charge recover prudently incurred reasonable costs of fuel and purchased power by electric companies. The SODA is not related to the cost of fuel.

The Department directs MECo and Nantucket to return the fuel charge over-recovery to ratepayers over three months rather than one year. This credit shall appear as a line item on each ratepayer's bill issued pursuant to meter readings for the billing months of October, November, and December 1999. Furthermore, this credit cannot be a part of any rate reduction[s] that are required by the Restructuring Act. The Department also directs MECo and Nantucket to file by December 15, 1999, a reconciliation for the purpose of implementing any adjustment to the credit amount that may be necessary due to a discrepancy between the forecasted KWH and the actual KWH consumed while the credit is in effect.

Pursuant to Boston Edison Company, D.P.U. 85-1C (1985), the Department directs MECo and Nantucket to apply interest to the fuel charge over-recovery total using an interest rate equal to the prime rate. D.P.U. 85-1C at 14. Interest shall accrue effective March 1, 1998.

Regarding exemptions from the requirements of G.L. c. 164, §§ 94G and 94G½ for goal-settings and performance reviews, no party objected to the Department granting MECo and Nantucket such exemptions. Since MECo has never owned generating units and since Nantucket has divested itself of all entitlement interests in generating units, the Department finds that it is in the public interest to grant exemptions from the requirements of G.L. c. 164, §§ 94G and 94G½. The Nantucket exemptions are effective as of the date that Nantucket divested its entitlement interests in each of its generating units. The Department notes that these exemptions do not preclude the Department from future investigations into the procurement of standard offer and default service power.

Regarding the replacement power costs that were incurred as a result of the Millstone III outages, due to the fact that MECo has historically purchased all of its power requirements from NEP, the determination of the rates to be charged for this power has been under the jurisdiction of FERC. Should FERC determine, in a future proceeding, that MECo is entitled to reimbursement for these replacement power costs, the Department expects MECo to pass this reimbursement on to ratepayers.

The Attorney General proposed that the Department order the Companies to file a list of any outstanding fuel charge related issues along with a proposal addressing how to resolve these issues. The Department finds that such an undertaking would be unnecessary as this Order effectively resolves all fuel charge related issues for MECO and Nantucket.

#### IV. ORDER

After due notice, hearing, and consideration, it is

ORDERED: That Massachusetts Electric Company and Nantucket Electric Company return their fuel charge over-recovery of \$20,800,459 to ratepayers, in the form of a per KWH credit on bills issued pursuant to meter readings for the billing months of October, November, and December 1999, but unless otherwise ordered by the Department, shall not become effective earlier than seven (7) days after it is filed with supporting data demonstrating that such credit complies with this Order; and it is

FURTHER ORDERED: That the fuel charge credit appear as a line item on each ratepayer's bill and shall not be a part of any rate reduction[s] that are required by the Electric Restructuring Act of 1997; and it is

FURTHER ORDERED: That Massachusetts Electric Company and Nantucket Electric Company file by December 15, 1999, a reconciliation for the purpose of implementing any adjustment to the credit amount that may be necessary due to a discrepancy between the forecasted KWH and the actual KWH consumed while the credit is in effect; and it is

FURTHER ORDERED: That Massachusetts Electric Company and Nantucket Electric Company apply interest to the fuel charge over-recovery total using an interest rate equal to the prime rate and accruing effective March 1, 1998; and it is

FURTHER ORDERED: That Massachusetts Electric Company and Nantucket Electric Company are exempted from the goal-setting and performance review requirements of G.L. c. 164, §§ 94G and 94G½ as set forth in this Order; and it is

FURTHER ORDERED: That Massachusetts Electric Company and Nantucket Electric Company comply with any and all other directives contained in this Order.

By Order of the Department,

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Janet Gail Besser, Chair

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

1. The February 20, 1998 Order also (1) exempted the Companies from the fuel charge, (2) authorized the Companies to put into effect an approved fuel charge for bills issued pursuant to meter readings for the billing month of March 1998 for electricity consumed in February 1998, and (3) authorized the Companies' continuance of the Qualifying Facility rate.

2. Pursuant to Nantucket Electric Company, D.P.U. 95-67 (1995), Nantucket's rates were replaced by MECo's rates, plus a cable facilities surcharge on December 31, 1996, which was the cable facilities' in-service date.

3. In the interim, the Department clarified the scope of the hearing to be solely exemptions from the requirements of G.L. 164, §§ 94G and 94G½ and not to include a comprehensive audit of the Companies' fuel charges. Interlocutory Order on Appeal of Hearing Officer Ruling, D.T.E. 98-13, at 5-6 (April 16, 1999).

4. Prior to the May 12, 1999 hearing, MECo and Nantucket Electric proposed crediting the fuel charge over-recovery amount to their Standard Service Reconciliation Account, an account accumulating the difference between the revenues MECo and Nantucket billed for Standard Offer Service and the actual cost of that service